Supreme Court, U.S.
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CASE NO. 91-1147

IN THE

Supreme Court of the United States

October Term, 1991

STEVEN GNATOVICH,

Petitioner

vs.

STATE OF OHIO

Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION

Norman E. Brague
Counsel of Record
Director of Law
City of Wadsworth, Ohio
145 High Street
Wadsworth, OH 44281
(216) 335-1521

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Other:

Ohio Revised Code Section 4511.19(A)(3) 4

STATEMENT OF THE CASE

In his statement of the case, the petitioner indicates that Ohio is a per se state meaning that results of breath testing devices may not be questioned at trial. The respondent notes that the Supreme Court of Ohio has indicated that:

> Rather than setting an irrebuttable presumption, Ohio's driving while intoxicated statute defines the point the legislature has determined an individual cannot drive without posing a substantial danger, not only to himself, but to others. The defendant may still challenge the accuracy of his specific test results, although he may not challenge the general accuracy of the legislatively determined test procedure as a valid scientific means of determining blood alcohol levels. The jury may consider those specific test results, and all other relevant evidence in ascertaining whether the state has shown beyond a reasonable doubt that the defendant has violated the statute. State v. Tanner (1984) 15 Ohio St. 3d 1,6; 15 OBR 1,5.

The respondent submits that the same rule would also be applicable to a breath test

result.

The respondent disagrees with the assertion made in the petitioner's statement of the case that the Ohio Administrative Rules do not comport with scientific reality and, in that sense, are discriminatory toward and against certain classes of people contrary to the Fourteenth Amendment to the United States Constitution.

The respondent also disagrees with the assertions made in the petitioner's statement of the case that the trial court did not address any of the issues raised in petitioner's motion and that the Ninth District Court of Appeals of Ohio manufactured an issue, irrelevant to the constitutional issue proposed, upon which it issued its decision. There is no federal constitutional requirement

that the state trial and appellate courts articulate in their opinions analyses of all issues raised. The respondent submits that when a motion or appeal has been denied, the denial itself constitutes addressing the issues raised. Furthermore, the petitioner did not assert that the trial court failed to address his issues as one of his assignments of error in the Court of Appeals of Ohio.

SUMMARY OF THE ARGUMENT

Section 4511.19(A)(3) of the Ohio Revised Code and the administrative regulations referred to in it have a presumption of constitutionality that has not been overcome because some scientists have concluded the regulations should be written differently. There is a rational basis for the state administrative regulations regarding breath testing procedures. There is no federal constitutional requirement that state courts articulate all of the reasons for their decisions.

ARGUMENT

't is obviously appropriate for states to enact and enforce laws to prohibit the operation of vehicles by persons whose ability to operate vehicles is impaired by alcohol. As the Supreme Court of the United States declared in South Dakota v. Neville 459 U.S. 553, 558-559; 74 L. Ed. 2d 748, 755:

> The situation underlying this case - that of the drunk driver - occurs with tragic frequency on our Nation's highways. The carnage caused by drunk drivers is well documented and needs no detailed recitation here. This Court, although not having the daily contact with the problem that the state courts have, has repeatedly lamented the tragedy. See Breithaupt v. Abram, 352 U.S. 432, 439; 1 L. Ed. 2d 448; 77 S. Ct. 408 (1957) ("The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield"); Tate v. Shout, 401 U.S. 395, 401; 28 L. Ed 2d 130; 91 S. Ct. 668 (1971) (Blackmun, J., concurring) (deploring "traffic irresponsibility and the frightful

> carnage it spews upon our highways"); Perez v. Campbell 402 U.S. 637, 657, 672; 29 L. Ed 2d 233; 91 S. Ct. 1704 (1971) (Blackmun, J., concurring) (footnotes omitted) ("The slaughter on the highways of this Nation exceeds the death toll of all our wars"); Mackey v. Montrym, 443 U.S. 1, 17-19; 61 L. Ed 2d 321; 99 S. Ct. 2612 (1979) (recognizing the "compelling interest in highway safety").

As part of its program to deter drinkers from driving, Ohio has enacted a law which forbids persons operating vehicles when the persons have concentrations of ten-hundredths of a gram or more by weight of alcohol per 210 liters of breath. Such bodily substance shall be analyzed in accordance with methods approved by the director of health. The purpose of this law is obviously not to discriminate against anyone based on sex or any other factor but rather to prevent a person from operating a vehicle when the

concentration of alcohol in his breath is indicative of impaired driving ability.

In this case, the petitioner asserts that the Ohio Administrative Rules do not comport with scientific reality and, in that sense, are discriminatory toward and against certain classes of people contrary to the Fourteenth Amendment to the United States Constitution. However, the presumption of constitutionality is not overcome because the petitioner has found some scientists who disagree with certain aspects of the administrative rules. The administrative rules are in fact generally accepted in the scientific community as a reasonable, rational basis for evaluating the level at which persons are likely to be impaired in their abilities to operate vehicles.

As for petitioner's argument that

the state courts did not address issues that he raised, there is no federal constitutional requirement that state courts articulate in their decisions an analysis of all issues raised. Furthermore, the petitioner did not assert that the trial court failed to address his issues as one of his assignments of error in the Court of Appeals of Ohio

CONCLUSION

The State of Ohio has not denied the petitioner any right under the federal constitution. The petition for a writ of certiorari should be denied.

Respectfully submitted,

Norman E. Brague
Counsel for Respondent
Director of Law
City of Wadsworth, Ohio
145 High Street
Wadsworth, OH 44281
(216) 335-1521